

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 LENIER AYERS,

11 Plaintiff,

12 v.

13 HENRY RICHARDS, et al.,

14 Defendants.

No. C08-5541 RJB/KLS

**REPORT AND RECOMMENDATION  
NOTED FOR: September 18, 2009**

15 Before the Court is Plaintiff Lenier Ayer's "Restraining Order Requesting the Return of  
16 My Personal Property Without Any Further Delay, and Injunction Preventing Additional Seizure  
17 of This Property," in which Mr. Ayers seeks the return of a gym bag he alleges was illegally  
18 seized from him by Defendants. Dkt. 43.

19  
20 Having carefully reviewed Mr. Ayers' motion, Defendants' response (Dkt. 44), and the  
21 balance of the record, the Court recommends that Mr. Ayers' motion should be denied.

22 **I. BACKGROUND AND RELIEF REQUESTED**

23 Mr. Ayers is civilly committed as a sexually violent predator at the Special Commitment  
24 Center (SCC) pursuant to Wash. Rev. Code 71.09. Dkt. 44, p. 2. In his Amended Complaint,  
25 filed on February 2, 2009, Mr. Ayers alleges, *inter alia*, that Defendants violated his First and  
26 Eighth Amendment rights by denying him access to the courts, providing insufficient responses

1 to his grievances, providing inadequate medical care and subjecting him to verbal and physical  
2 harassment. Dkt. 15.

3 In the motion requesting return of his property and for a preliminary injunction, Mr.  
4 Ayers alleges that on May 25, 2009, a staff member unnecessarily searched and then seized his  
5 gym bag and falsely accused him of having received the gym bag from some unidentified staff  
6 person. Dkt. 43, p. 4. Mr. Ayers also complains about property (e.g., CDs and DVDs)  
7 confiscated during a search of his bedroom in 2006, and about funds he received in 2006 and in  
8 May 2009 that were credited to his resident trust account. *Id.*, pp. 17, 5.

10 Mr. Ayers seeks an order directing the Administrator of the SCC to return his gym bag,  
11 77 assorted music and DVD discs, and 80% of the “garnished” funds he claims were illegally  
12 deposited into his resident trust account. *Id.*, p. 4.

## 13 II. DISCUSSION

14 Under the Prison Litigation Reform Act, 18 U.S.C. § 3626 (PLRA), a plaintiff is not  
15 entitled to prospective relief unless the court enters the necessary findings required by the Act:  
16

17 The court shall not grant or approve any prospective relief unless the court finds  
18 that such relief is narrowly drawn, extends no further than necessary to correct  
19 the violation of a Federal right, and is the least intrusive means necessary to  
20 correct the violation of the Federal right. The court shall give substantial weight  
to any adverse impact on public safety or the operation of a criminal justice  
system caused by the relief.

21 18 U.S.C. § 3626(a)(1)(A) (emphasis added).

22 In civil rights cases, injunctions must be granted sparingly and only in clear and plain  
23 cases. *Rizzo v. Goode*, 423 U.S. 362, 378 (1976). This holding applies even more strongly in  
24 cases involving the administration of state prisons. *Turner v. Safley*, 482 U.S. 78, 85, 107 S. Ct.  
25 2254 (1987). “Prison administration is, moreover, a task that has been committed to the  
26 responsibility of those [executive and legislative] branches and separation of powers concerns

1 counsels a policy of judicial restraint. Where a state penal system is involved, federal courts  
2 have . . . additional reason to accord deference to the appropriate prison authorities.” *Id.*

3       The purpose of preliminary injunctive relief is to preserve the status quo or to prevent  
4 irreparable injury pending the resolution of the underlying claim. *Sierra On-line, Inc. v. Phoenix*  
5 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). When seeking injunctive relief, the moving  
6 party must show either (1) a likelihood of success on the merits and the possibility of irreparable  
7 injury or (2) the existence of serious questions going to the merits and the balance of hardships  
8 tipping in [the movant’s] favor.” See *Nike, Inc. v. McCarthy*, 379 F.3d 576, 580 (9th Cir.  
9 2004)(quoting *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991)) (internal quotations  
10 omitted). “These two alternatives represent extremes of a single continuum, rather than two  
11 separate tests. Thus, the greater the relative hardship to [the movant], the less probability of  
12 success must be shown.” See *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999)  
13 (internal quotations omitted). Under either test, the movant bears the burden of persuasion.  
14 *Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857, 869 (9th Cir. 2003).

15       The issues raised and nature of relief requested by Mr. Ayers in his motion, are not of the  
16 same character as that sought in his amended complaint. In his amended complaint, Mr. Ayers  
17 alleged that Defendants violated his constitutional rights by denying him access to the courts,  
18 denying him adequate medical care and subjecting him to verbal and physical harassment.

19       A temporary restraining order and a preliminary injunction are requests for relief, not  
20 freestanding causes of action. See *Ricon v. Recontrust Company*, 2009 WL 2407396, \*6 (S.D.  
21 Cal.) (August 04, 2009). Defendants argue that Mr. Ayers cannot show he will prevail on the  
22 merits warranting a preliminary injunction or temporary restraining order relating to the issues  
23  
24  
25  
26

1 raised in his motion because these issues are not raised as claims in his complaint. Dkt. 44, p. 3  
2 (citing *Ricon*, at \*6). The Court agrees.

3 In a preliminary injunction, it is appropriate to grant “intermediate relief of the same  
4 character as that which may be granted finally.” *De Beers Consol. Mines v. U.S.*, 325 U.S. 212,  
5 220 (1945); *Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th Cir. 1997). However, a court should  
6 not issue an injunction when the relief sought is not of the same character and the injunction  
7 deals with a matter lying wholly outside the issues in the underlying action. *Id.*

8  
9 Mr. Ayers seeks relief for matters unrelated to the matters raised in his Amended  
10 Complaint. Therefore, the undersigned recommends that his motion for preliminary injunction  
11 may be denied on that basis.

## 12 CONCLUSION

13 For the foregoing reasons, the undersigned recommends that the Court **DENY** Mr. Ayers’  
14 motion for preliminary injunction. Dkt. 43.

15 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
16 Procedure, the parties shall have ten (10) days from service of this Report to file written  
17 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
18 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the  
19 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on  
20 **September 18, 2009**, as noted in the caption.

21  
22 DATED this 1st day of September, 2009.

23  
24  
25   
26 Karen L. Strombom  
United States Magistrate Judge